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September 8, 1999

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WRITTEN EX PARTE

SEP 08 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Ms. Salas:

This is to give notice that on September 8, 1999 I sent the attached written ex parte to Lawrence E. Strickling, Chief of the Commission's Common Carrier Bureau. In accordance with Section 1.1206(b)(1), I am filing two copies of this notice in the docket identified above. If you have any questions concerning this, please call me.

Sincerely,

Robert T Blau/DF

Attachment

cc: Lawrence E. Strickling
Jake Jennings
Kyle Dixon
Sarah Whitesell
William Bailey
Linda Kinney
Dorothy Atwood

No. of Copies rec'd 0+1
List ABCDE

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David G. Frolio
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September 8, 1999

By Telecopy

Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 5-C450
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Strickling:

On behalf of BellSouth Corporation, I am enclosing a copy of a declaration of Thomas E. Allen, Jr. The declaration discusses the history of the construction of competitive access provider fiber builds and the availability of alternatives to incumbent LEC special access facilities.

In accordance with Section 1.1206(b)(1), I shall file two copies of this written ex parte presentation with the Secretary of the Commission and requesting that it be associated with the record in CC Docket No. 96-98.

Very truly yours,

David G. Frolio

cc: Jake Jennings
Kyle Dixon
Sarah Whitesell
William Bailey
Linda Kinney
Dorothy Atwood

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

DECLARATION OF THOMAS E. ALLEN, JR.
On Behalf of BellSouth Corporation

Background and Purpose

I am Thomas E. Allen, Jr. and I have worked in various capacities in the telecommunications arena for the past twenty years. I have worked for both an incumbent local exchange company (ILEC) and two of the larger facilities-based competitive local exchange companies (CLECs) in the market today. During this time, I have been involved with the negotiation and implementation of interconnection agreements between the CLECs and the LECs. These activities have included being a part of various state commission sponsored workshops that were set up to help with the CLECs work through problem areas with the LECs. Additionally, I have been directly involved with the provision of special access and dedicated transport services by ILECs, CLECs and Competitive Access Providers (CAPs). After the passage of the Telecommunications Act of 1996, the facilities-based CAPs took the next logical evolutionary step and became providers of both dedicated and switched voice and data telecommunications services.

This declaration first sets out some of the history of the construction and operation of local transport networks providing alternatives to transport over ILEC facilities. Next, this paper discuss the soundness and reasonableness of BellSouth's proposed test to determine whether CLECs have real alternatives to incumbent LEC dedicated transport facilities consistent with the Supreme Court's *AT&T v. Iowa Utilities Board* opinion.

Dedicated Transport Competition: A Brief Evolutionary History

This discussion of competition for telecommunications transport services will focus on the CAPs and their evolution into the more robust, full-range group of telecommunications service providers that we now know as CLECs.

Competitive Access Providers

Soon after divestiture in 1984, alternative transport providers began to emerge. These CAPs constructed dedicated fiber transport facilities for the purpose of providing transport services primarily to interexchange carriers (IXCs) as an alternative to those provided by the ILEC. These facilities were initially constructed using optical fibers in a ring topology that carried traffic between IXC POPs, ILEC wire centers and some of the IXCs' largest end user customers. CAPs focused on providing transport alternatives to IXCs because IXCs presented revenue opportunities and these opportunities were concentrated at relatively small number of locations. CAPs connected the POPs of multiple IXCs to their networks to maximize their revenue; CAPs were then generally unaffiliated with IXCs so business plans called for providing service to as many IXCs as possible. Where an IXC POP was not connected to a CAP fiber ring, generally a short spur from the ring would be sufficient to connect the POP.

The term "bypass" started to be used to describe the fact that "bypass alternatives" (i.e., the ability to bypass parts of the local exchange companies' network), principally transport from IXC POPs to ILEC wire centers, were developing. Actually, competitors capable of providing alternatives to the LEC's relatively high-priced transport services were starting to enter this market. These competitors, entrepreneurial in nature, were entering the large metropolitan markets, constructing networks and then contracting with IXCs to provide more efficient and cheaper transport alternatives to those offered by the ILECs.

Within a few years after divestiture, multiple competitors were deploying networks in larger markets and were directly competing with each other as well as with the ILEC. By the early 1990s, CAPs began to move into tier 2 and tier 3 markets. As a result of competition from these CAP networks, the ILECs were forced to install newer technologies and lower their tariff prices.

Today there is a very robust market for dedicated transport services. Many competitors offer individualized contract pricing based on volume and term commitments. These agreements have begun to take into account all dedicated transport services subscribed to throughout the service areas of the competing companies. Simply, competition in the dedicated transport service market has caused new advanced fiber optic-based technologies to be deployed with a corresponding significant increase in capacity and drop in price. Now, companies using other dedicated transport technologies, such as radio and microwave are entering this market. These companies and technologies are providing a new layer of alternatives to ILEC transport, adding to the alternatives already placed in service by CAPs.

The Competitive Local Exchange Companies Emerge

Even before the Telecommunications Act of 1996 was passed, facilities-based CAPs started naturally to evolve into CLECs capable of providing local exchange switched voice services as well as those dedicated services they provided as CAPs. Facilities-based CLECs began to enter new markets and expand their facilities in markets where they had already been competing as CAPs.

With the passage of the Telecommunications Act came the ability of CLECs to collocate their transport facilities within an ILEC's central office. With collocation the CLECs could connect ILEC unbundled loops to the CLEC's network The CLEC could then originate and terminate local and long distance switched traffic through its own local switch. With the transformation of CAPs into CLECs new opportunities to compete for new revenue streams were realized. CLECs committed additional capital investment to expand into new markets. CLECs paid substantial sums to collocate in key densely populated wire centers to be able to attract more customers. Other companies such as CATV companies began to become CLECs along with the traditional CAPs. Many of the former owned extensive fiber networks and began to look for ways to generate more revenue from that investment.

CLECs seeking to grow and become even more efficient competitors today are interconnecting and collocating with one another to have access to more customers and transport options. CLEC-to-CLEC arrangements for transport service or capacity are becoming more common, further increasing the ability of CLECs to assemble alternatives to ILEC facilities. CLECs are thereby expanding their market reach and using their capital more efficiently.

Now a new generation of CLECs is entering markets and investing capital in intelligent network switching technologies and advanced services equipment and leasing transport capacity from whomever will give the best deal. The business strategies of these CLECs are built on the presence of competitive alternatives to ILEC facilities and demonstrate that transport alternatives to the ILECs exist. The decisions of these CLECs are creating new markets for those competitors already providing transport. Similarly, the presence of multiple transport competitors in particular areas encourages this new generation of CLECs to deploy their technologies.

Attached to this declaration are maps depicting the location of CLEC/CAP fiber facilities in twelve BellSouth cities. The CLEC/CAP fiber rings shown on these maps are generally representative of how CLECs and CAPs construct their fiber network. In all certainty, more fiber sources are available in these competitive areas than these diagrams would indicate. Besides fiber provided by CLECs and CATV companies, electric public utilities are a major source of fiber which CLECs are using to provide competitive alternatives to ILEC services.

Additionally, technology is beginning to make other transport sources available. Wireless transport is one technology at the forefront today. Several CLECs make use of these "wireless-fiber" high speed, high capacity connections as an overall part of their network build-out.

Potential Effect Of Unbundling At TELRIC on CLEC Network Investments

If ILECs are made to unbundle dedicated transport at TELRIC rates to the IXC POPs, a primary concern should be on the effect that obligation may have on CLEC fiber networks that are currently a source of competition to the ILECs. It has already been

discussed in some detail that CAPs have been aggressively competing with ILECs for dedicated transport service on routes to IXC POPs. Competition has matured to the point that many competitors offer long term individual contracts to customers at prices that are more competitive than just a few years ago. Large and small IXCs have been benefiting from the dynamic created by these alternative providers. Also, new innovative technologies currently being developed and deployed that will provide competitive alternatives. If ILEC dedicated transport prices are driven immediately to TELRIC rates in areas where competitors have made substantial investments and are competing aggressively today, my concern is that many may have their network investments debased. New and existing customers would likely shift to unbundled network elements (UNEs) combination because the TELRIC rates would squeeze prices more than the natural flow of downward pressure on prices that competition has brought and will continue to bring. Such a drastic pricing move to TELRIC rates for special access elements may at least slow the deployment of alternative transport technologies as well.

BellSouth's Proposed Test of Impairment

BellSouth's proposed test for impairment under section 251(d)(2) focuses on whether CLECs have alternatives to incumbent LEC dedicated services on specific routes.

Specifically, BellSouth states

> Incumbent LEC dedicated transport facilities would not be unbundled under Section 251:
>
> 1) between incumbent LEC wire centers in which alternative providers are collocated and which are served by alternative transport facilities, and

2) between an incumbent LEC wire center and an IXC POP where an alternative provider is collocated at the incumbent LEC wire center and the wire center is served by alternative transport facilities.

I am discussing the test and how it is applied to ensure that where CLECs are providing competitive alternatives in the marketplace, they can do so based on the competitive pricing that already exists for dedicated transport to IXC POPs and for interoffice transport between ILEC central offices. In areas where no competitive alternative exists for these services, the test would require mandatory unbundling because the goal should be to extend competition for the benefit of end user consumers. Simply, where alternatives exist, let the market determine pricing, where there are not alternatives to ILEC facilities, then unbundled network elements would be required at TELRIC rates to enhance competition.

There are a couple of key points that should be made. First and foremost, the outcome reached in this proceeding should be one that fosters competition where it does not exist today. Competition already exists for special access transport services. Much of this discussion concerns alternative "entrance" facilities to an ILEC central office. These facilities provide transport alternatives from ILEC central offices to IXC POPs and other locations determined by the alternative provider. They require the collocation of a CLEC's facilities in the central office and the termination of CLEC fiber at that collocation space. Given today's technology, the capacity of these alternative fiber links is very substantial, and can readily and easily be expanded.

The outcome of this proceeding, as stated earlier, is to maximize consumer welfare while protecting competition, not specific competitors. (This is where a potential

dichotomy exists.) Competition for alternative transport to IXC POPs has existed for over a decade. This market has developed and continues to grow based on companies that have already been competing in this market. Companies have had considerable time to identify and to enter markets that would support competitive alternatives, and have developed the right processes and procedures for ordering and provisioning service. As a result prices have dropped. Certainly, most large markets today have multiple providers of alternative dedicated transport to IXC POPs (*see* attached diagrams). The construction of additional or new connections between IXC POPs and ILEC central offices is relatively easy, and can be completed in relatively short order, should a carrier wish to do so. Additionally, technologies continue to increase the capacity that these existing fiber rings can provide. The recently released pricing flexibility order also acknowledges this fact.

Competition in the local exchange markets has not been around as long. Because of this fact, the market alternative "entrance" facilities in LEC central offices have not matured to the same degree as that for alternative dedicated transport to IXC POPs. For customers in the market for alternative dedicated transport to IXC POPs, one alternative facility-based provider should be enough to meet any requirement that a real alternative to ILEC transport exists. Provisioning of additional or new links on these routes is relatively simple. In addition, competition on these routes is already relatively mature and the industry has already gone through substantial consolidation. In reality, most large markets have multiple providers today as is indicated in the attached maps.

With regard to transport between ILEC central offices, one alternative provider may not provide a sufficient alternative. CLECs are expanding their territories, but have

not yet penetrated significantly into the local exchange market. A more conservative test may be whether there are two alternative entrance facilities and two collocators present. Such a requirement of two separate alternatives can be justified.

The objective should be to strike a reasonable balance between assuring adequate competition and avoiding the wholesale debasement of a CLEC's investment in the construction of it's "entrance" facilities. Across the board availability of those facilities at TELRIC rates from the ILEC may bring about the latter. Again, most densely populated wire centers already have two or more CLECs collocated in them. New technologies and the construction of additional links could also provide additional alternatives. New technologies may not develop as quickly if these interoffice transport facilities are available at TELRIC pricing in every central office throughout the BellSouth region.

Use Restrictions

In addition to properly applying the impair test to network elements used to provide special access service, a use restriction prohibiting the use of unbundled network elements to provide special access is appropriate. The prime aspect of these proposals is to prevent the wholesale cutover of existing IXC special access loop and transport services to UNEs at TELRIC pricing. A use restriction should recognize that facilities which are providing access to IXC POPs would continue to be purchased out of the access tariffs while those facilities providing some local exchange service would be eligible for UNE pricing. This use restriction proposal is policeable given that use restrictions have been used successfully in the past. Such an approach would help keep all competitive avenues open while at the same time drawing a clear distinction between the use of UNEs for local service (including mixed local and access) and special access.

The September 2, 1999 letter of Bell Atlantic, Intermedia, Allegiance and Time Warner goes to the heart of this issue and provides a good framework for a workable policy for restrictions on use. The main task that these use restrictions should seek to accomplish is to prevent the wholesale change over of special access loops and transport that go to IXC POPs. This amounts to no more than a billing change and is not what unrestricted access to UNE combinations was meant to accomplish when envisioned.

UNE combinations should be available to any CLEC (including those specializing in data) at TELRIC prices. No restrictions on their use by these companies should exist. As for special access to IXC POPs, the Commission should at least examine this issue further before allowing such a substantial reduction in access revenues. However, if a CLEC has been forced to order special access because of lack of UNE availability or an adequate UNE ordering process, then the RBOCs should agree to change those services over to the UNE equivalent if so identified by the CLEC or data CLEC.

SUMMATION

The test BellSouth has proposed for whether dedicated transport between an ILEC central office and an IXC POP should be available at TELRIC pricing is reasonable and fair. Special access services have been subject to competition for nearly fifteen years. Advancements in technologies, including the ability to expand the capacity of existing fiber optic facilities, help to ensure that prices for dedicated transport to IXC POPs will continue to be controlled by competitive pressures. With respect to interoffice transport facilities, it is my view that with the modification proposed, that test will be reasonable and fair. Tracking on a per central office basis is the best way to proceed because it reflects actual alternatives and CLEC investments. Having at least two sources of

alternative interoffice facilities other than the ILEC will ensure greater competition. Because local transport alternatives are not as well developed as those for transport to POPs, a higher threshold can be justified. Investments in competing networks and new technologies should be encouraged. Most densely populated wire centers have multiple collocators today. Likewise, well-articulated use restrictions on special access and UNEs could ensure that regulatory arbitrage is kept to a minimum and the CLECs and data CLECs can grow unimpeded by having access to all the UNE combinations they need to be successful.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Thomas E. Allen, Jr.

Subscribed and sworn to
before me this 8th
day of September, 1999.

Notary Public

My Commission Expires:

Notary Public, Clayton County, GA
My Commission Expires August 4, 2001